

HOUSE BILL NO. 422

INTRODUCED BY J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR A SHOWING THAT A PROPOSED EXERCISE OF EMINENT DOMAIN BY A RAILROAD OR RAILROAD CORPORATION IS NECESSARY; REQUIRING THE POSTING OF A BOND BY A RAILROAD; AMENDING SECTIONS 70-30-110, 70-30-111, 70-30-203, AND 70-30-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be taken -- greatest public good -- least private injury. (1) In all cases in which land is required for public use, the state or its agents in charge of the public use may survey and locate the land to be used. The use must be located in the manner that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish written notice to the listed persons.

(2) Prior to or at the time of rejection of the final written offer as referred to in ~~70-30-111(4)~~ 70-30-111(1)(d), the condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the condemnee considers necessary to minimize damages to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel of property."

Section 2. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. (1) Before property can be taken,

1 the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based
2 on the following findings:

3 ~~(1)(a)~~ the use to which the property is to be applied is a public use pursuant to 70-30-102;

4 ~~(2)(b)~~ subject to subsections (2) through (8), the taking is necessary to the public use;

5 ~~(3)(c)~~ if already being used for a public use, that the public use for which the property is proposed to be
6 used is a more necessary public use;

7 ~~(4)(d)~~ an effort to obtain the property interest sought to be taken was made by submission of a written
8 offer and the offer was rejected.

9 (2) In the case of a railroad or railroad corporation or any subsidiary, partnership, joint venture, or other
10 entity that stands to benefit directly or indirectly, the condemnor shall obtain authority from the department of
11 transportation, based upon a determination by the department that the railroad's exercise of the right of eminent
12 domain would be for a public use consistent with public necessity. The department shall consider the
13 requirements of this chapter when granting or denying an application for authority to use eminent domain. The
14 decision to grant or deny an application must be made after reasonable notice and opportunity to be heard,
15 including but not limited to a public hearing. Within 2 years after [the effective date of this act], the department
16 shall adopt rules describing the procedural and substantive requirements required under this subsection (2). The
17 rules must specify the information that must be submitted by a condemnor, which must include but is not limited
18 to:

19 (a) the nature of the project, including the infrastructure required and the anticipated scope of activity
20 to be associated with a project once it is operational;

21 (b) whether the project is consistent with state and local government comprehensive and general plans
22 and any state or federal resource management plans;

23 (c) whether agricultural land areas or a culturally or historically significant site, as determined by state
24 or tribal authorities, will be affected by the project;

25 (d) an evaluation of comparable land use based upon opposing functional needs or encroachment
26 tendencies;

27 (e) an evaluation of the impact on, proximity to, availability of, and access to state parks or
28 environmentally sensitive areas;

29 (f) fish and wildlife impacts;

30 (g) whether local ground water resources, wells, or surface water rights will be used, including any

possible subsidence issue, the availability of potable water for a project, a report on whether adequate water is available for the project, a service agreement from a city, town, or private water company, if applicable, and information as to whether the project will be providing a new water system and water treatment facilities;

(h) an evaluation of the area for depth to ground water from the land surface;

(i) an evaluation of the area for potential drainage problems or impacts to ground water sources, surface water sources, or water delivery systems, including the project's potential to increase demands for drainage facilities;

(j) whether the project is within an attainment area or a nonattainment area for which the United States environmental protection agency has approved a state implementation plan and whether the project will induce air pollution concentrations;

(k) the maximum noise level for the closest sensitive noise receptor; and

(l) an evaluation of the potential exposure to hazards from the project, including the transportation, storage, or other accommodation of pesticides, sanitary waste, toxic waste, toxic chemicals, radioactive material, explosives, and flammable or fire-prone material.

(3) If the department of transportation determines that any information submitted by the condemnor pursuant to subsection (2) indicates a potential negative impact to state or local government land, the condemnor must be required to submit a mitigation plan, addressing the negative impacts, to the department for approval.

(4) The condemnor under subsection (2) has the burden of proving, by a preponderance of the evidence, that the exercise of the right of eminent domain is a public use consistent with public necessity.

(5) The condemnor under subsection (2) shall demonstrate to the department that alternative property suitable for the specific proposed use of the property proposed to be taken is unavailable, either through onsite accommodation or through voluntary sale of alternative, reasonably located property, and that the property interest to be taken does not exceed what is necessary for the proposed use. If the location of any portion of the route changes, the condemnor shall again start the procedure provided for in subsections (2) through (8).

(6) The department of transportation may deny an application under subsections (2) through (8) if the department finds that the condemnor has failed to prove any of the findings required in this section or that the applicant has failed to provide any of the required information.

(7) The condemnor under subsection (2) shall bear all expenses related to the application, including reimbursing the department of transportation for the department's actual and necessary costs related to the application.

1 (8) A railroad or railroad corporation may not take or acquire by condemnation any land, property,
2 easement, or other interest belonging to the state or any authority or instrumentality of the state or any
3 conservation easement owned by a nonprofit entity."

4
5 **Section 3.** Section 70-30-203, MCA, is amended to read:

6 **"70-30-203. Contents of complaint.** (1) The complaint for condemnation must contain:

7 (a) the name of the corporation, association, commission, or person in charge of the public use for which
8 the property is sought to be taken, who is the plaintiff;

9 (b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record
10 and any other claimants of record of the property sought to be taken, if known, or a statement that they are
11 unknown, who are the defendants;

12 (c) a statement of the right of the plaintiff to take the property for public use;

13 (d) statements of each of the facts necessary to be found in 70-30-111(1);

14 (e) a description of each interest in real property sought to be taken, a statement of whether the property
15 sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest
16 sought is the minimum necessary interest. All parcels lying in the county and required for the same public use
17 may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate
18 or separate them to suit the convenience of the parties.

19 (f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed
20 to be taken as well as to any remaining parcel of property.

21 (2) If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show
22 the location, general route, and termini and must be accompanied with a map of the route, so far as the route is
23 involved in the action or proceeding.

24 (3) (a) If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir
25 is sought to be taken, in addition to the items listed in subsection (1), the complaint must include a description
26 of the reservoir and of the land in which the reservoir is alleged to be contained and a description of all other
27 property and rights sought to be taken for use in connection with the right to store natural gas in and withdraw
28 natural gas from the reservoir.

29 (b) In addition, the complaint must state facts showing that:

30 (i) the reservoir is subject to being taken by the plaintiff;

- 1 (ii) the underground storage of natural gas in the land sought to be taken is in the public interest;
2 (iii) the reservoir is suitable and practicable for natural gas storage;
3 (iv) the plaintiff in good faith has been unable to acquire the rights sought to be taken; and
4 (v) a statement that the rights and property sought to be taken are not prohibited by law from being
5 taken.
6 (c) The complaint must be accompanied by a certificate from the board of oil and gas conservation as
7 provided in 82-10-304."
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9 **Section 4.** Section 70-30-307, MCA, is amended to read:

10 **"70-30-307. When payment of compensation to be made -- deposit of bond for railroads. (1)** In
11 a proceeding for condemnation for a railroad, the condemnor shall within 30 days after final judgment:

12 (a) pay the sum of money assessed but may at the time of or before the payment elect to build any
13 required fences and cattle guards. A condemnor who elects to build the required fences and cattle guards shall
14 execute to the condemnee a bond with sureties to be approved by the court, in double the assessed cost of the
15 fences and cattle guards, conditioned upon building the fences and cattle guards within 8 months from the time
16 the railroad is built on the land taken. If the bond is given, the condemnor is not required to pay the cost of the
17 fences and cattle guards.

18 (b) execute to the condemnee a bond in double the amount of the judgment with sureties approved by
19 the court.

20 (2) In an action on the bond, the condemnee may recover reasonable attorney fees.

21 (3) A bond executed under this section may be released upon building the fences and cattle guards or
22 completion of the project, as appropriate."

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24 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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26 **NEW SECTION. Section 6. Retroactive applicability.** [This act] applies retroactively, within the
27 meaning of 1-2-109, to any condemnation proceeding brought by a railroad or railroad company that has not been
28 finalized before [the effective date of this act].

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